

BILL ANALYSIS

C.S.S.B. 2321
By: King
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that current protocols for the regulation of emissions by the Texas Commission on Environmental Quality (TCEQ) during an event affecting electric demand or grid reliability are insufficient in that they do not ensure successful mitigation when electric generation is at risk during an emergency condition or when there is a significant risk of an emergency condition.

C.S.S.B. 2321 seeks to, among other things, authorize the TCEQ to exercise its enforcement discretion to waive enforcement for emissions from electric generation facilities and on-site backup generation facilities in Texas during a period requested by an independent system operator if the operator notifies the TCEQ that additional electric generation is necessary to mitigate an emergency condition or a significant risk of an emergency condition and to establish that the TCEQ has the discretion to enforce a rule or standard against an applicable owner or operator for such a period.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 2321 amends the Health and Safety Code to authorize the Texas Commission on Environmental Quality (TCEQ) to exercise its enforcement discretion to waive enforcement for emissions from electric generation facilities and on-site backup generation facilities in Texas during a period requested by an independent system operator if the operator notifies the TCEQ that additional electric generation is necessary to mitigate an emergency condition or a significant risk of an emergency condition. After an operator submits the notification to the TCEQ, the TCEQ, subject to the bill, has the discretion to enforce a rule or standard, including an emissions limit or standard, hours of operation limit, or any similar operational limit, against the owner or operator of an electric generation facility or on-site backup generation facility for the period in the notification and the operator must notify market participants in Texas of the period in the notification during which the limits or standards may not apply to the operation of an electric generation facility or on-site backup generation facility in Texas.

C.S.S.B. 2321 requires the owner or operator of an electric generation facility or on-site backup generation facility eligible for waived enforcement during the period in the notification to do the following:

- take commercially reasonable steps to operate environmental controls and minimize excess emissions during the period;
- maintain operational records during the period; and
- submit proper documentation of the facility's operational records to the TCEQ, including the following:
 - the facility's name;
 - a contact name and phone number;
 - the county in which the facility is located;
 - the customer reference number issued to the facility by the TCEQ;
 - the name of any units in the facility that exceeded an emissions limit or standard during the period; and
 - a description of the emissions event, including the date, time, pollutant, quantity, and duration.

The bill establishes that the TCEQ has the discretion to consider whether an exceedance of an emissions limit or standard during a period for which the notification is submitted is appropriate as the basis for an enforcement action against the owner or operator of an electric generation facility or on-site backup generation facility based on information available to the TCEQ, including information contained in such documentation. The bill requires the owner or operator of an electric generation facility or an on-site backup generation facility eligible for waived enforcement during the period in a submitted notification to report any exceedance of an emissions limit or standard in accordance with TCEQ regulations and permit requirements.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2321 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed required the TCEQ to exercise its enforcement discretion to waive enforcement for emissions from generation facilities and on-site backup generation facilities in the ERCOT power region during a period requested by ERCOT if ERCOT notifies the TCEQ that electric demand and reliability needs in the region cannot be met or that a local electric grid reliability issue in the region exists during that period, the substitute instead authorizes the TCEQ to exercise its enforcement discretion to waive enforcement for emissions from electric generation facilities and on-site backup generation facilities in Texas during a period requested by an independent system operator if the operator notifies the TCEQ that additional electric generation is necessary to mitigate an emergency condition or a significant risk of an emergency condition. The engrossed and the substitute further differ in conformance with this difference.

Whereas the engrossed prohibited the TCEQ from enforcing a rule or standard against an applicable owner or operator for the period in a submitted notification, the substitute instead establishes that the TCEQ has the discretion to enforce a rule or standard against an applicable owner or operator for such a period.

Whereas the engrossed prohibited the TCEQ from considering an exceedance of an emissions limit or standard during a period for which a notification is submitted as the basis for an enforcement action against an applicable owner or operator unless the owner or operator fails to submit required documentation, the substitute instead establishes that the TCEQ has the discretion to consider whether an exceedance of an emissions limit or standard during such a period is appropriate as the basis for an enforcement action against an applicable owner or operator based on information available to the TCEQ, including information contained in such documentation.

Whereas the engrossed authorized the owner or operator of an applicable facility eligible for waived enforcement during the period in a submitted notification to report any exceedance of an emissions limit or standard as an event that did not result in the emission of at least a reportable quantity of unauthorized emissions, in accordance with TCEQ regulations and permit requirements, the substitute instead requires the owner or operator of an applicable facility eligible for waived enforcement during such a period to report any exceedance of an emissions limit or standard in accordance with TCEQ regulations and permit requirements.